IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

Writ Petition (Ld) No. 961 of 2007

1. Dr.Akshatha Divakar Prabhu
   Age 24 years, Presently
   residing at A-4, Kirti Society
   Jijamata Road, Thane (East)

2. Dr.Muznah Mubarak Kapdi
   Age 24 years, presently
   residing at Darula Min Building
   5th floor, 126, Navroji Hill Road
   No.16, Dongri, Mumbai 400 009

3. Dr.Anant Ganesh Kokarn
   Age 24 years, Presently residing
   at B-2, Sahyadri, Plot No.39
   Nath Pai Nagar, Ghatkoper,Mumbai

4. Dr.Pallavi Arvind Joshi
   Age 24 years, Presently residing
   at 136, Gokulpeth, Walmiki Nagar
   Nagpur 10

5. Dr.Maulik Shah
   Age 24 years, presently residing
   at Room No.5, Popat Jeeva Building
   2nd floor, Dhanaji Wadi,
   Malad (East), Mumbai 400 097 ..Petitioners

vs.

1. The State of Maharashtra
   through its Department of
   Medical Education & Drugs
   Mantralaya, Mumbai

2. The Director of Medical
   Education & Research
   having his office at Saint
   George’s Hospital Compound
   G.P.O., Mumbai 400 001 ..Respondents

Mr.V.M.Thorat with Mr. Shri Pratap Patil i/b Mr.Sachin Gite for petitioners.
Mr.R.M.Kadam, Advocate General with Mr.A.A.Kumbhakoni,

Associate Advocate General i/b Mr.M.D.Naik, A.G.P. for respondents.

(2) Writ Petition No. 3284 of 2007

Sonali Gajanan Choudhari
Aged about 26 years, Resident
of Plot No.29, Padole Layout
Jeevan Chhaya Nagar,
Nagpur 440 022 ..Petitioner

vs.

1. The State of Maharashtra
Medical Education and Drugs
Department, Mantralaya,
Madam Cama Road, Mumbai 400 032
through its Secretary.

2. The State of Maharashtra
through Department of Medical
Education and Research, Mantralaya
Madam Cama Road, Mumbai 400 032 ..Respondents

Mrs.Chandana Salgaonkar-Radia with Mr.A.A.Naik for petitioner.
Mr.R.M.Kadam,Advocate General with Mr.A.A.Kumbhakoni, Associate Advocate General i/b Ms.P.C.Cardozo, A.G.P. for respondents.

Judgment reserved on 3rd May,2007
Judgment pronounced on:21st June,2007

CORAM: SWATANTER KUMAR C.J.
& S.C.DHARMADHIKARI J.
21st JUNE, 2007

J U D G M E N T (Per S.C.DHARMADHIKARI J.)

1. We had in our order dated 3rd May, 2007 indicated that the arguments of both sides have concluded and the cases are closed for judgment. We issued certain directions by

our said order. We also enquired from Counsel a sto whether with these directions the petitions can be disposed off. However, the counsel for petitioners submitted that the legal issues raised be decided as they may arise in future as well.

2. Accordingly, Rule in both petitions. Respondents waive service. By consent, Rule made returnable forthwith.

3. These petitions are instituted by students, who having passed their H.S.C. (12th standard examination) were admitted to M.B.B.S.Course in the respective medical colleges. They completed four and half years M.B.B.S. course and underwent one year compulsory internship. Thus, they are eligible to pursue their post graduate studies in medicine and other faculties. However, for that purpose, they have to appear at the "Common Entrance Test" conducted by the State of Maharashtra through the Department of Medical Education and Research. After the Common Entrance Test is concluded a Merit list is displayed showing their performance at the Common Entrance Test and based upon their marks in the merit list the post graduate seats are allocated and distributed.

4. The respondents have framed rules for admission to the post graduate medical course and therein prescribed the Common Entrance Test. We are concerned in these petitions with the Rules for the current academic year.

5. It is the case of the petitioners that approximately 6500 students appeared in the Common Entrance Test. The result of this test was declared on 8th February, 2007. The merit list was displayed on the website and it is the case of the petitioners that their names have figured in the said merit list.

6. The petitioners submit that based upon the marks that they have obtained and their placement in the merit list they were eligible for the seats which are available in the post graduate medical course. It is their case that the rules permit them to exercise their choice/option and it is also permissible under the rules for them to change or alter the same. This was always the position and according to them, the rules as framed, confer a right on the student to avail of his choice including a specific subject and a specific college. It is their further case that as and when new or additional seats are available the petitioners can switch to those seats as per their choice. It is their case that the rules framed till date take care

of and recognise the aforesaid rights.

7. However, it is their case that the rules have been altered midway and to their detriment. In this behalf they invited our attention to the Full Bench decision of this Court wherein it is observed that the Rules should not be changed frequently.(See 1991 Mh.L.J.page 1336; Ashwin Prafulla Pimpalwar Vs.State of Maharashtra)

8. A reading of Rule 6.3 of the Rules, according to the petitioners, would demonstrate that the position of seats pertaining to the post graduate course, is not conclusive. If certain seats become available after the All India Entrance Examination, then, the institutewise availability of the seats would also jsd yp be displayed. Reliance is placed upon Rules 6.3 to 6.6 of the Rules. Further our attention is invited to the Rules setting out the selection process. It is contended that Rule 12.1 stipulates that the candidate should submit only one preference form failing which he would be disqualified. The preference form is available at the office of the Designated Authorities at Mumbai, Pune, Aurangabad and Nagpur and should be submitted at the office of the Designated Authority where the candidate has appeared. The preference form should be submitted as per the

Schedule which would be notified. Since reliance is placed upon Rules 12.2.2 and 12.2.3 the same are reproduced hereinbelow:-

> "12.2.2: The availability of postgraduate seats as per course, college and category will be provided in the information brochure for filling of Preference form and on website "www.dmer.org." The selection will be on the basis of merit and the preferences submitted by the candidates in their preference form. For filing of vacant seats after first round, same preference form will be considered and no separate preference form will be required to be filled by the candidate.
>
> 12.2.3: The candidates who have filled the preference form, but are not selected in the first round are eligible for vacant seats in the subsequent rounds."

9. Thereafter, our attention is invited to Rule 12.8 and the process for filling vacant seats. That process is set out in Rule 13. Rule 13.2 stipulates that upon conclusion of the first round or the further round(s), the candidates who have been allotted seats in the earlier round(s) so also the candidates who have not been allotted any seat,

would be eligible. In the subsequent round(s) "Betterment Chance(s)" will be given to the candidate(s) who have already been allotted seat(s). However, it is clarified that shifting on account of "Betterment Chance(s)" given by the candidates in any round will be effected only and only if such candidate in the subsequent round(s) is found entitled for change of course or change of college. Mere possibility of a change in a category will not amount to "betterment". As such no shifting will be effected in such an eventuality. Our attention is also invited to Rule 13.3 which stipulates that there shall be a final round for allotment of seats, remaining vacant after completion of earlier rounds of allotment of seats by way of preference form. This final round of allotment of seats shall be conducted by way of personal counselling instead of allotment on the basis of preference form. It is also pointed out that on account of allotment of seats in the final round, no fresh vacancy consequent upon allotment made in this round will be granted. Since final round of allotment is made to fill in the available vacant seats without creating a new or fresh vacant seats, such a stipulation is made.

10. Our attention is thereafter invited to the fact that seats displayed on the website were not the seats

earmarked for "All India Quota". In other words the unclaimed "All India Seats" were not available with the Directorate at the stage at which the Rules were framed or the Common Entrance Test was held. In such circumstances, the students were required to fill up the preference form for exercising their right to select the subject and college of their choice. All the petitioners filled in such preference form and inaccordance with the Rules, copy of which is annexed as Annexure A.

11. It is the case of the petitioners that after their preference forms were filled up, respondent no.2 Director, on 7th April, 2007 issued the amendment to the Rules which according to them take away the right conferred by the above referred rRles (unamended rules). The grievance projected is that the students who are otherwise eligible for claiming better seats in the subsequent rounds were now held to be ineligible for participation in the subsequent rounds. Thus, what they could have done even by retaining their seats for which they have been selected in the earlier round is now not permissible.

12. The petitioners submit that the experience is that every year 3 to 4 rounds are held for admission to the post graduate courses. In the first round of admission,

many students aspiring for selection do not join the course for various reasons. Some of the students do not take up the seats because of selection under "All India Quota". These seats are carried forward to the next round. In the second round, these seats are offered to all the candidates as "Betterment Chance". Thus, the students are allowed to go for higher preference and only after their selection to such better seats, earlier allotted are cancelled. They have given several instances and details of the events, which take place every Academic Year because of which more seats become available in the State Quota. For example, All India Seats revert back to the State Quota and thereafter the same are offered in the second or subsequent round to the students/candidates. The candidates elected in such subsequent rounds have to surrender their earlier seats. However, the practice which has been prevailing for last several years is withdrawn by amendment to the rules.

13. The petitioners have invited our attention to the amended rules, copy of which is annexed as Annexure C. They are entitled as "Revised Rules/PGM- CET 2007 Selection Process." Rule 13.5 as amended reads thus:

> "13.5: - All the candidates to whom a seat has

been allotted in the 1st round on the basis of Merit-cum-Preference will have to compulsorily join the college and course so allotted, by completeing the requisite formalities as set out by these Rules. If any candidate to whom a seat has been allotted in the 1st round does not join the college and course seat so allotted, it will be presumed that such a candidate is not interested in the admission process and for all further round(s) of admission, such candidate shall not be considered for allotment of any seat allotted in the 1st round wants a betterment of his/her choice, such a candidate must initially accept the allotment and join the college by completing the necessary formalities as set out by these Rules, failing which such a candidate will be thrown out of the entire admission process of the current academic year 2007-2008. The seat so allotted to such a candidate who does not join, will be presumed to be a vacant seat as on and from the next date after the date set out as the last date for joining the college in terms of such allotment. Such a vacant seat will be allotted in the next round of admission."

Our attention is also invited to amended Rule 13.7 which stipulates that a candidate to whom a seat is allotted in the first round and had to join the college accordingly, if satisfied with such allotment, must submit a "Status-Retention Form (Annexure I) on or before 10th May, 2007 with the Dean of the College where he has been allotted the seat. It is stipulated that filling up of and submission of such a Status-Retention Form is crucial and vital. This period will not be extended for any reason whatsoever. The submission of the Status-Retention Form is an irrevocable and irreversible act of the candidate submitting such Status Retention Form. Under no circumstances candidates will be allowed to submit the form after expiry of the aforesaid last date. If the candidate has submitted such a Status-Retention Form, he will not be allowed to withdraw the same either before or any time after the last date. The candidates who do not submit such a Status Retention Form would lose their seat allotted to them. If they do not submit the Status Retention Form, they will have to compulsorily appear in the final counselling round and get the allotment in their favour in accordance with their relative merit, choice and availability, failing which such candidates will not get any seat whatsoever. The contention is that the amendment stipulates that moment a status retention form is

sbumitted the candidate who has submitted the same goes out of the selection process and will not thereafter be considered for allotment of any seat in the further round. In other words, the further admission process will be conducted only in respect of the candidates specified in Rule 13.10. Our attention is thereafter invited to amended Rules 13.12, 13.13 and 13.14 which read thus:

> "**13.12:** The aforesaid final rounds of admission shall be conducted by personal counselling. For the purpose of this round, following seats shall be considered as avaiable for admission: -
>
> (a) All the seats that have remained vacant, if any, at the end of 1st admission round on account of non allotment;
>
> (b) All the seats that were allotted in the 1st round but were rendered vacant on account of the candidate to whom such seats were allotted either did not join or joined but did not fill in Status Retention Forms.
>
> (c) All such seats that may revert back to the State Government Quota from All India Quota for any

reason whatsoever.

(d) All such seats that may become additionally available on any count whatsoever, including but not limited to seats if any additionally recognised by Medical Council of India or made additionally available on account of any Order that may be passed by the Courts etc.

13.13: In the aforesaid final round of admission by personal counselling, preference forms submitted by all the eligible candidates will not be considered and the same shall be treated to have been cancelled. In other words, this final personal counselling round shall not be conducted on the basis of preference forms submitted by the candidates.

13.14: On account of allotment of seats in this final round of admission, no fresh vacancies consequent upon allotments made in this round will be created. This is principally because this final round of allotment is meant to fill in (as far as possible all available vacant seats without creating a new or fresh vacant seat on account of

such allotment. At this round, eligible candidates will appear personally, seeking allotment of seats of their choice. The personal counselling for such allotment will be held strictly in the order of merit. Each candidate will be offered all seats that have remain vacant and are available for allotment only at the time of his/her turn of counselling i.e. State Merit List position. In this round, allotment shall be made on the basis of choice made on the spot by the candidate at the time of personal appearance counselling. All the candidates to whom the seats will be allotted in accordance with the counselling, during the course of this round will be required to join the concerned college and complete all necessary formalities requisite for taking admission accordingly within the prescribed time. Allotment of seat once made in this personal counselling round, shall not be changed and/or cancelled at any count whatsoever. Therefore, while giving the choice on the spot at the time of this personal counseling round, the candidates must consider the available seats thoroughly and opt for a seat which they must join once allotted. It is made hereby clear that in case such a candidate does not join

> the concerned College and/or fails to comply with the necessary formalities of the admission within the prescribed time, such a candidate shall not be eligible for appearing at immediately next PGM-CET conducted for grant of admission to post graduate course in the State of Maharashtra i.e. PGM-CET 2008."

13. The short submission, therefore, is that once the participation in further round is not prohibited, despite selection and allotment of a seat in the earlier round, then, by amending the rules midway, the right conferred upon the candidates of such participation could not have been taken away. The amendment, therefore, is violating the mandate of equality enshrined by Article 14 of the Constitution of India and is discriminatory as well.

14. Mr.Thorat and Ms.Salgaonkar appearing for the petitioners vehemently contended that the petitioners are gravely prejudiced in as much as their betterment chances are wholly defeated. The betterment choices are available not only to the students for enhancing and upgrading their skills but also in public interest because the ultimate aim is to get Meritorious candidates for the seats. Since the meritorious and most eligible candidates get seats of

their choice in this selection process, which is transparent and fair, the benefits thereof are available to the public at large. In ultimate analysis, the society gets better doctors. Therefore, there does not seem to be any reason or rational for deletion of the right and for these reasons the amended rules, if held to be applicable to the petitioners, deserve to be quashed and set aside. The challenge is to revised rules 13.7, 13.10 and 13.12. The other contention is that if these rules do not in any manner restrict the selection process and further round is going to be held, then, the participation thereat of only those students who have not been allotted any seat in the earlier round does not serve any purpose. For all these reasons, the submission is that the amended rules either should be held to be inapplicable to the petitioners or alternatively declared ultra vires Article 14 of the Constitution.

15. Learned Advocate General on the other hand has submitted that because of certain events beyond the control of the authorities that the amendment had to be incorporated. He contends that original rules as framed were challenged in this Court in Writ Petition No.1888 of 2007. During the pendency of this petition the Directorate received a communication from the Director

General of Health Services (Medical Examination Cell), New Delhi dated 26th March, 2007. By this communication, revised time schedule even for the State Government Quota was communicated. According to the respondents, this was necessitated because of the order passed by the Hon'ble Supreme Court on 16th March, 2007 in I.A.7 of 2007 in W.P.(C) No.157 of 2005. By this order the parties before the Supreme Court agreed that there would be a second counselling of students under the scheme for admission to Academic Year 2007-2008 for Post Graduate Course in All India Quota. The order fixed the time schedule for completion of the admission process for All India Quota. It is in the light of this, that the Rules had to change.

16. In the light of these contentions on behalf of the State, we had directed Respondent No.2 Director to file affidavit. Accordingly an affidavit is filed on 30th April, 2007. Para 3 of this affidavit reads thus:

> "3. At the out set, I say that taking into consideration the grievances made by the petitioners in the present petition, my Directorate has decided to extend the date of submission of Status Retention Form from 10th of May, 2007 to 20th of May, 2007. Therefore, the time schedule

consequently will be asunder :-

18th April, 2007: Last date that was provided for joining the respective colleges in accordance with the allotments made in the 1st round. Admittedly, all the petitioners have accordingly joined the respective colleges.

9th May, 2007: Last date for the second and final round of All India Quota allotment carried out by the Central Government agency on All India basis.

16th May, 2007: Last date to join the respective college in accordance with the allotments made at the last round of All India Quota allotment carried out by the Central Government agency on All India basis.

18th May, 2007: On the Website of the Directorate of Medical Education and Research, as also on the Notice Boards of all concerned Government Medical Colleges throughout the State, all the seats set out hereunder course wise and college wise will be notified :-

(a) All the seats if any, that have remained unallotted from the State government Quota in the first round.

(b) All the seats that have remained vacant from the State Government Quota which though were allotted in the first round, the allottees did not join.

(c) All the seats that have remained vacant from All India quota either on account of non allotment or non joinder of allottees, by 16th May, 2007 or even otherwise have remained vacant and, therefore, have bounced back to the State Government Quota.

20th May 2007: Last (revised) date for the submissions of the "Status Retention" forms.

21st May, 2007: On the Website of the Directorate of Medical Education and Research, as also on the Notice Boards of all the concerned Government Medical Colleges throughout the State, all the vacancies that will be available for allotment during the 2nd and final round by way of personal

counselling will be notified. These seats will be:-

(a) All the seats if any, that have remained unallotted from the State Government quota in the first round.

(b) All the seats that have remained vacant from the State Government Quota which though were allotted in the first round, the allottees did not join.

(c) All the seats that have remained vacant from All India Quota either on account of non allotment or non joinder of allottees, not joined by 16th May, 2007, or even otherwise have remained vacant and, therefore, have bounced back to the State Government quota.

(d) All the seats that have become vacant on account of non submission of Status Retention Forms by such students to whom the seats were allotted in the 1st round from the State Government Quota.

22nd to 26th May 2007:- Conducting of the final round of admission as and by way of "Personal Counselling".

Therefore, it is contended that on 21st May, 2007 each and every seat that is available for allotment at the 2nd/last personal counselling round will be notified. Not a single seat which is not notified will be made available for allotment to anybody in the 2nd/last personal counselling round or any time thereafter. No seat which is not notified will be allotted to any student.

17. We, therefore, pointed out to the learned Counsel appearing for the petitioners that since it is ensured by this affidavit that no un-notified seats would be allotted to the candidates and that the last date for second round so also for joining the respective colleges and submission of Status Retention Form being modified as above, the larger controversy need not be decided. However, the petitioners insisted that for future, this issue requires to be settled and accordingly we have heard and considered the entire arguments.

18. The justification of the State is that in view of the

order of the Supreme Court dated 16th March, 2007 and consequent communication of the Central Directorate that the subsequent rounds after the first round had to be cancelled. The time schedule that is prescribed made it impossible for the Directorate in the State of Maharashtra to have intermediate rounds. The Directorate was, therefore, required to immediately proceed to conduct the last round of personal counselling. This requires suitable amendment and changes in the original set of rules. Thus, it is only in the light of the order of the Hon'ble Supreme Court and the subsequent developments that the rules had to be revised.

19. The learned Advocate General contended that by the revised rules the Directorate had to strike a balance between those who are before the Court and those who have not approached the Court for any relief. The method adopted by the authorities for allotment of All India Quota seats cannot be equated with the Directorate functioning at the State level. The seats that remained vacant in the second round of All India Quota reverted to the State Govt. quota. However, any seat remaining vacant in the State Govt.quota goes waste if not filled in, in terms of the schedule laid down by earlier Directions of the Hon'ble Supreme Court and Medical

Council of India, the State Directorate had to conclude the admission process by 31st May, 2007 and could not extend the same thereafter. In such circumstances a balance has been struck by giving sufficient time to the candidates who joined the seats actually allotted to them. While doing so, and curtailing the rounds, care has been taken that no seat in the State quota goes waste and that no person shall be allotted a seat if he/she is not eligible for the same. Similarly no seat which is not notified can be part of the selection process.

20. It is contended that there is no prohibition for revision of rules. It cannot be said by any stretch of imagination that the rules have been amended. All that has been done is some rules have been reframed. While reframing some rules on account of revised time schedule for filling up the seats, certain rules had to be deleted. This is not a situation where the entire admission and selection process has undergone a change. It is not as if that the vacant seats surrendered from All India quota are not made available once they reverted to the State. They are disclosed. The argument that the rules have been amended midway and take away any vested right is thus misplaced. By the amendment the alleged right of betterment is not taken way completely. However, the

option for betterment made available under the rules has to be exercised within a time schedule. Prescribing such a time schedule would not be perse arbitrary or discriminatory. In this behalf our attention is invited to a note appearing under the head "selection process". That note (item 8) sets out the process for filling vacant seats.

21. According to the learned Advocate General this note correctly sums up and clarifies the betterment option. He submits that it is nothing but a option for betterment and not a right as claimed. Ultimately, based upon the placement in the merit list, the student/candidate is allotted the seat. Merely because, after all rounds the seat does not happen to be of his choice does not mean that his betterment choices are taken away. It is merely a chance and would become available provided the candidate/student who is allotted the seat at the first round has joined the college by completing all the formalities under the rules but has not submitted the status retention form by the cut off date. In other words, a seat allotted to a student in the first round becomes available to such candidate but if he does not retain it he is not prohibited from participating in the further/final round. The student who has been allotted

the seat in the first round can join the college and still opt not to submit the status retention form by cut off date. He takes the consequences for not filling the status retention form but there is no prohibition from participation in the further rounds. Learned Advocate General then emphasised the fact that if such alteration or change had not been made there was every likelihood of the student to whom the seat has been allotted at a college in the first round not joining the same indefinitely or retaining it indefinitely awaiting better choices. Such a step would encourage participation of such students in further rounds to the detriment of those below them in the merit list. Hence, mere taking away of choices or options can never be said to be illegal or arbitrary so also a discriminatory act. There is no question of the rule being ultra vires as contended.

22. The petitioners have placed reliance upon the decision of the Supreme Court in the case of Anand S.Biji Vs. State of Kerala and others reported in (1993) 3 Supreme Court Cases 80. It would be necessary to consider the factual position before the Supreme Court in this decision. The Hon’ble Supreme Court was considering a case where the candidate who applied for admission under All India Quota is required to indicate 8 colleges and 6

subjects in the order of preference to which he seeks admission. The factual position before the Hon'ble Supreme Court was that there were 70 medical colleges and 40 speciality colleges. The post graduate courses comprise degree courses as well as diploma courses. After the results of examinations are published, the admissions are made on the basis of merit-cum-preference-cum eligibility with the aid of the computer. The argument, therefore, was that there are lists issued at the first instance, second and even further. The further argument was that because of such issuance some times candidate with lesser marks gets better subjects than the candidates with higher marks. The contingency of seats falling vacant was high lighted in the context of the factual position brought to the knowledge of Kerala High Court and Hon'ble Supreme Court. Thus, the argument was in the context of authorities not being able to adhere to the prescribed time schedule.

23. It must at once be noticed that this decision is prior to the Supreme Court decision in the case of M.C.I. Vs. Madhusingh and Mridula Dhar Vs.Union of India and others. In these decisions rendered in W.P.No.5166 of 2001 and W.P.(Ld) No.206 of 2007, the Supreme court has laid down elaborate guidelines which have to be followed

and strictly adhered to by all those incharge of medical admissions. As a consequence of this, now, the contingency before the Supreme Court highlighted in the aforesaid decision has not been noticed for quite some time. This contingency has not arisen and if there is no factual foundation as was before the Hon'ble Supreme Court in the decision relied upon, then, we see no reason as to why the later decision of the Supreme Court and guidelines laid down therein should not be followed. The guidelines/directions issued in 1993 decision are no longer holding the field. In such circumstances and the Supreme Court having not laid down any principle of law, we are of the opinion that the decision of the Supreme Court in (1993) 3 S.C.C. page 80 is clearly distinguishable.

24. The other decision relied upon by Shri Thorat and reported in 1997(2) Mh.L.J.193 (Samradni Sunderrao Ghorpade and another Vs. State of Maharashtra) again would not assist the petitioners. This Court issued a direction despite rejecting the petition and granting no relief to the petitioner therein . The Supreme Court decision and guidelines therein are all subsequent to this decision. Now the scenario has undergone a complete change. The Medical Council of India and the Central and

State authorities having been directed by the Hon'ble Supreme Court to notify the seats and hold common entrance test in accordance thereto so also all States having framed rules on these lines, the reliance on the decision of this Court is of no assistance.

25. We are in agreement with the learned Advocate General that if the rules as amended are read in their entirety, then, they do not in any manner prejudice the petitioners or meritorious students. The apprehension that meritorious students availing of the seat earlier only because of their higher placement in the merit list would be prejudiced as the subsequent/remainder seats would g o to less meritorious students, is not well founded. Even if the meritorious student is selected and in fact joins the college where the seat is allotted to him, still, by not submitting the status retention form , he can keep his chances alive. He can await his choice for betterment by taking some risk or can keep his choice alive by stating in writing that he being not satisfied with his allotment desiring further participation in the process. In this behalf, a harmonious reading of rules 13.5 and 13.7 of the revised rules makes the position clear. Rule 13.5 envisages that a candidate to whom the seat has been allotted in the first round must join the college after

completion of the admission formalities. Thereafter, the following words are crucial:-

> "It is made clear that even if a candidate to whom a seat has been allotted in the 1st round wants a betterment of his/her choice, such a candidate must initially accept the allotment and join the college by completing the necessary formalities as set out by these Rules, failing which such a candidate will be thrown out of the entire admission process of the current academic year 2007-08. The seat so allotted to such a candidate who does to join, will be presumed to be a vacant seat as on and from the next date after the date set out as the last date for joining the college in terms of such allotment. Such a vacant seat will be allotted in the next round of admission."

If Rule 13.5 is incorporated in the above rules, then, to our mind, the intention of the authority is clear and unambiguous. They do not desire to waste any seat or would let the same fall vacant save and except for unavoidable reasons. The anxiety is to see that a student must join the college where he has been allotted the seat in accordance with the merit list or else he will be

thrown out of the entire admission process for that academic year. Rule 13.7 will have to be read with this rule and not in isolation. The petitioners have read the same in isolation. If the same is not read in isolation and harmoniously and together with other rules, then, intent of submission of the status retention form becomes clear. Once it is submitted it cannot be withdrawn. There is a outer date prescribed for submission of the status retention form. That would be dependent upon the admission/selection process for the particular academic year. However, even if the status retention form is not submitted all that happens is the candidate will lose the seat so allotted and joined by him. However, he can appear at the final counselling round.

26. In our view, the rules if read in the manner suggested by the petitioners would prima facie make out a case of discrimination. However, if the same are not seen in isolation but read harmoniously, then, the intent appears to be clear. The candidate does not get thrown out of the entire admission process save and except his non joining the institute/college where he is allotted seat. This non submission of the status retention form which is subsequent to the joining of the college would be only viewed as a forfeiture of his seat but considering

the intent of the rule makers as is evident in rule 13.5, in our view, an harmonious reading would balance the situation. Therefore, if and only if the events set out in Rules 13.8 and 13.9 occur the candidate would go out of the remaining selection process or forfeit the seat. Therefore, actual occupation of a seat is what is predominant in the mind of the authorities, although, the word "mandatory" has been used in so far as status retention form is concerned, in our view the said submission would not entail in the candidate being thrown out of the entire admission process save and except a case where the seat has not been occupied at all. In other words, if the candidate/student has joined the seat but has failed to submit the status retention form, it would not result in his seat being forfeited completely. This is apparent by the words appearing in rule 13.6. The candidate has to fill the status retention form only if he is satisfied with the allotment. Therefore, the candidate must join the seat at the college but it is not mandatory for him to fill in and submit the status retention form if he is not satisfied with the allotment. He can participate in the process subsequent to the first round of allotment if he is dissatisfied with the allotment of the seat in his favour. In such a case further stipulation in rule 13.7 and consequent non submission of

status retention form would indicate that the chance or option of participating further is neither lost nor defeated by the amendment. Assuming there is a vested right as contended by the petitioners, that right is saved by the interpretation placed by us upon the rules. Therefore, after joining the college the student, if dissatisfied with the allotment he need not fill in the status retention form but can take further chance. However, the moment the final round is concluded and the candidate still not filling the form or indicating his choice would forfeit the allotment of seat in his favour. This interpretation would balance the equities with that of the larger public interest. Ultimately, the States spends for the medical education. The student cannot insist and that too for indefinite period that time be granted to join the seat/college. Ultimately, he must make his choice or option and that cannot outweigh the larger public interest.

27. In the light of the interpretion that is placed upon the rules we are of the view that the amended rules for the academic year 2007-2008 and more particularly Rule 13.7, 13.10 and 13.12 are not ultra vires Article 14 of the Constitution of India.

28. Since we have turned down the challenge to the rules but at the same time issued directions ensuring availability of option or choice to the students/petitioners, no further directions are necessary to be issued. Subject to the directions already issued and for the reasons assigned hereinabove, we do not feel that this is a fit case for interference under Article 226 of the Constitution of India.

29. Rule is, therefore, discharged in each of these petitions but with no order as to costs.

(CHIEF JUSTICE)

(S.C.DHARMADHIKARI J.)